

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**RECEIVED**

**AUG 25 2004**

**ORIGINAL**

In the Matter of

INFORMATION TECHNOLOGY DEPARTMENT  
STATE OF NORTH DAKOTA  
Bismarck, North Dakota

Federal-State Joint Board on Universal Service

Changes to the Board of Directors of the  
National Exchange Carrier Association, Inc.

Schools and Libraries Universal Services  
Support Mechanism

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

File No. SLD-245592

CC Docket No. 96-45

CC Docket No. 97-21

CC Docket No. 01-06

To: The Commission

**SUPPLEMENT TO PETITION FOR RECONSIDERATION  
AND INVOCATION OF RIGHTS UNDER  
THE PAPERWORK REDUCTION ACT, 44 U.S.C. § 3512**

The State of North Dakota, Information Technology Department ("North Dakota"), hereby supplements its Petition for Reconsideration and Invocation of Rights under the Paperwork Reduction Act, 44 U.S.C. § 3512, filed November 19, 2003.<sup>1</sup> In the interests of a complete record, this Supplement is being submitted to report further information concerning the OMB approval process that has just come to the attention of undersigned counsel and to address

<sup>1</sup> The petition requests reconsideration of the Commission's Order, FCC 03-240, released October 21, 2003 (Commissioners Copps and Adelstein dissenting and issuing a Joint Statement)("FCC Order"), denying review of an Order of the Wireline Competition Bureau, Telecommunications Access Policy Division, DA 02-956, released April 24, 2002 ("Bureau Order").

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two additional questions raised by the Wireline Competition Bureau staff during a recent ex parte meeting.<sup>2</sup>

# **I. FURTHER OMB INFORMATION.**

In addition to the previously cited Office of Management and Budget (“OMB”) extension, the undersigned counsel has just noted a further OMB action approving certain minor non-substantive revisions to the year 4 FCC Form 471. These changes are unrelated to the “NEW and FIRM” postmark requirement, further confirming the lack of required OMB approval for the “NEW and FIRM” requirement.

On October 19, 2000, soon after OMB extended authority to continue use of the existing Form 471 for an additional three-year period, the Commission submitted a second application to OMB seeking approval for certain minor nonsubstantive revisions to the approved information collection. This second application (Attachment A hereto) sought emergency review without the need for prior public notice in view of the short turnaround time. As described in the Commission’s transmittal letter, all requested revisions were “non-substantive” in nature and made:

“to enhance clarity and to reduce processing costs. See the attached matrix for a listing of all changes made to the form along with the corresponding rationale. We believe that the revisions made to the Form 471 are nonsubstantive. However, out of an abundance of caution, we resubmit FCC Form 471 to OMB for review and approval. We do not believe the revisions will have a significant impact on our current burden estimate.”<sup>3</sup>

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<sup>2</sup> See Letter to Marlene H. Dortch, Secretary, FCC, from the undersigned reporting Ex Parte conference, filed August 20, 2004.

<sup>3</sup> Letter to Mr. Donald Arbuckle, Acting Administrator and Deputy Administrator, Office of Information and Regulatory Affairs, dated October 19, 2000, p. 1. (Attachment A, p. 1)(emphasis added).

Notice of OMB's approval of this second application, granted October 25, 2000, was published in the Federal Register on November 8, 2000. See 65 F.R. 67006.

The matrix attached to the OMB application (Attachment A hereto, pp. 11-14) listed all changes to the Form 471 for which OMB approval was requested. As shown therein, none of the requested changes dealt in any way with the "NEW and FIRM" year 4 postmarking requirement.<sup>4</sup> While making extremely detailed changes in other parts of the form, OMB approval for the substantial change in Block 6 filing instructions was neither sought nor obtained in this second application.

In stark contrast, the current edition of the Form 471 highlights the present version of the "NEW and FIRM" postmarking requirement as one of the "KEY INFORMATION" items in a prominent place on the first page of the Instructions.<sup>5</sup> This version of the form containing the postmarking requirement appears to have been first approved by OMB on March 24, 2003 in order to clarify the instructions and make them easier to understand.<sup>6</sup> Prior to that date, however, the "NEW and FIRM" postmarking requirement lacked OMB approval and is therefore unenforceable.

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<sup>4</sup> The minor revision made to the text of the filing instructions on the form (see Petition for Reconsideration, p. 9, fn.7) was not included on the matrix and therefore was not presented to OMB for approval.

<sup>5</sup> Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471), October 2003, p.1, drawing the reader's attention in bold face print to the form section "**Filing Requirements for Forms 471 Submitted on Paper and Online.**" (pp. 8-9).

<sup>6</sup> Public Information Collections Approved by Office of Management and Budget, 68 F. R. 23310 (May 1, 2003)("The Commission revised the FCC Form 471 and instructions to make it possible to read with electronic readers, to update references to current deadlines and relevant statutes, and to clarify explanations and make the form generally easier to understand.")

## **II. RESPONSE TO ADDITIONAL STAFF QUESTIONS.**

### **A. The “NEW and FIRM” Requirement Constitutes a Substantive Modification to a Collection of Information Requirement Within the Scope of the PRA.**

The question raised is whether the “NEW and FIRM” requirement constituted a substantive or material change to a “collection of information” within the scope of PRA. There are two aspects to this question: 1) was the information filing procedure part of the previous “collection of information” subject to OMB approval under PRA; and 2) did the “NEW and FIRM” requirement constitute a substantive or material change to the previous approved requirement. Both answers are clearly yes.

On the first point, the prior Block 6 filing instructions indisputably were part of the “collection of information” (OMB Control # 3060-0806) that had been previously approved by OMB. The prior requirements set forth on the Form 470 Instructions simply required the applicant filing electronically also to “complete and mail to the SLD” the Block 6 Certification form<sup>7</sup>. The inclusion of information transmittal instructions is just what is contemplated by the PRA. A “collection of information” within the scope of the PRA is expressly defined by OMB regulations to include “the act of collecting and disclosing information” and any “plan or other instrument calling for the collection or disclosure of information.” 5 C.F.R. § 1320.3(c).

Second, the process changes made by the “NEW and FIRM” requirements were both substantive and material. From the standpoint of the form filer, they did far more than simply

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<sup>7</sup> As previously noted, these official Instructions were not significantly changed in the year 4 Form 470. The failure to incorporate the “NEW and FIRM” requirement into these Instructions created substantial confusion and ambiguity for applicants with different documents providing different and inconsistent instructions. This factor alone is grounds for a waiver of the first-time requirement under the waiver standards established in *Naperville Community Unit School District 203*, 16 FCC Rcd. 5032 (2001).

establish a new annual deadline date.<sup>8</sup> The change must be viewed in the context of the different process and looser requirements applied in earlier years. In place of the previous two-step process with a distinctly different deadline for each step, the “NEW and FIRM” requirement substituted a unitary one-step process. It further changed the perfection of filing standard from receipt by SLD to “postmarking” by the applicant and made it an absolute qualification requirement. In the Commission’s own words, it was a “new policy” developed by SLD in consultation with the Commission to eliminate the problem of unexpected shipping delays after mailing.<sup>9</sup> In contrast, the standard to perfect the manual filing of the Block 6 Certification after the window closed had ranged from 106 days in year 2<sup>10</sup> and to 12 days in year 3..<sup>11</sup>

As a result of these changes, applicants were required to adjust their filing procedures to ensure the manual filing of the Block 6 Certification by the same window deadline that applied to the electronic filing process. The electronic transmission of data and the mailing of a paper document are distinctly different transactions for an applicant. Having been conditioned in earlier years to complete each transaction separately in a sequential “one-after-the-other” fashion

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<sup>8</sup> Even if it were viewed as a change in filing deadline alone, this change would be subject to OMB approval under the PRA. See fn. 6, *supra* (OMB approval requested and granted for new filing dates).

<sup>9</sup> *Alpine County Unified School District*, DA 02-218, released January 31, 2002, paragraph 3 (emphasis added). While numerous rulings have noted that this change was intended to benefit applicants, that is irrelevant to the issue raised herein as to whether the substantial change was lawfully implemented under PRA with clear and fair notice permitting applicants to adjust to the change.

<sup>10</sup> See *Edgerton Public School*, DA 01-2803, released December 4, 2001 (paragraph 3). As summarized therein, this deadline was set after the close of the window due apparently to the slowness in receiving the paper filings. The only requirement prior to the close of the window was to complete and mail the paper documents with no deadline given.

<sup>11</sup> *West Jasper School District*, DA 01-2769, released November 29, 2001 (paragraph 11).

with no window deadline for the second step<sup>12</sup>, obviously some adjustment in filing procedures was required. The PRA was intended to address exactly this type of a situation. The burdens the PRA charges OMB to review include required adjustments in procedures to comply with new filing instructions and in transmitting the information. 44 U.S.C. § 3502(2) & (F).

The magnitude and substantiality of the change is also shown by the large number of applicants, including North Dakota, who failed to make the required adjustment and were therefore automatically disqualified. Changes in a filing procedure are one thing where there is no substantial penalty for a failure to comply with the changed requirement. But where “letter-perfect” adherence to the new filing procedure (even if seemingly modest on its face) is a basic qualifying requirement, it is an animal of a very different color. This has been made very clear many times by the Court of Appeals in reversing other letter-perfect filing requirements for failure to implement to the new requirement properly. As held by the Court of Appeals, for example, in *Salzer v. F.C.C.*, “the less forgiving the FCC’s acceptability standard, the more precise its requirements must be. The FCC cannot reasonably expect applications to be letter-perfect when, as here, its instructions for those applications are incomplete, ambiguous or improperly promulgated.”<sup>13</sup>

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<sup>12</sup> For example, with respect to the related Form 470, in urging applicants to file electronically, the SLD had advised applicants to “remember that you will then need to mail in your printed-out, signed Block 6 certification as soon as possible after you complete the online application, but these certifications will be accepted even after our March Form 470 deadline.” Friday is Form 470 Day, SLD Website, March 1999 Announcements.

<sup>13</sup> 778 F.2d 869, 875 (D.C.Cir. 1885). See also, *Satellite Broadcasting Co., Inc. v. F.C.C.*, 824 F.2d 1 (D.C. Cir. 1987).

The Commission may not have it both ways. The “NEW and FIRM” filing requirement cannot at the same time be both a basic program qualification requirement and an insubstantial minor change in an OMB approved information collection.

**B. The Governing Compliance Standard in the Absence of OMB Approval.**

The requirements of PRA and Commission precedent are clear and unequivocal on this point. As required by OMB regulations, where the information collection is unapproved and thus lacking a valid control number, “the agency shall not treat a person’s failure to comply, in and of itself, as grounds for withholding the benefit or imposing the penalty. The agency shall instead permit respondents to prove or satisfy the legal conditions in any other reasonable manner.” 5 C.F.R. § 1320.6(c)(emphasis added). The Commission expressly adopted this standard in *Portland Cellular Partnership*: “where an information collection requirement lacks required OMB approval, we [the Commission] must permit the applicant to provide or satisfy the legal conditions in any reasonable manner.”<sup>14</sup> This properly recognizes that the “public protection” provisions of the PRA (44 U.S.C. § 3512) are exceedingly broad and must be respected. Under Section 3512, “if an agency promulgates an information collection without OMB approval, ‘members of the public may ignore it without risk of penalty.’”<sup>15</sup>

In this case, the manner in which North Dakota has complied with the information collection requirement is well within the zone of reasonableness. North Dakota’s Block 6

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<sup>14</sup> *Portland Cellular Partnership*, 11 FCC Rcd. 19997, 20007-08 (1996), aff’d sub nom, *Saco River Cellular v. F.C.C.*, 133 F. 3d 25 (D.C .Cir. 1998), cert. denied, 525 U.S. 813 (1998). See also, *Dana Communications, Ltd.*, 7 FCC Rcd. 1878, 1879 (1992)(“agencies may not impose a penalty for failure to comply with an unauthorized information requirement, and ‘shall instead permit respondents to prove or satisfy the legal condition in any other reasonable manner.’ See Section 1320.5(b).”); *Kent S. Foster*, 7 FCC Rcd. 7971, 7972, fn. 10 (1992); and *Fair Oaks Cellular Partners*, 10 FCC Rcd. 9980, 9982 (1995).

<sup>15</sup> *Portland Cellular Partnership*, *supra* at 20002, citing, *Dole v. United Steelworkers of America*, 494 U.S. 26, 40 (1990).

Certification was mailed to SLD on February 9, 2001, soon after the close of the filing window, and presumably received soon thereafter. There is no evidence that this minor delay would have prejudiced the processing of the application by SLD in any way.

By way of comparison, in *Portland Cellular Partnership* and other cases, corrective filings have been uniformly allowed without regard to any arbitrary or pre-existing deadline. See *Portland Cellular*, 11 FCC Rcd. at 20007-08; *Dana*, 7 FCC Rcd. at 1879; and *Foster*, 7 FCC Rcd. at 7972, fn. 10. In *Portland Cellular*, for example, the claim of a PRA violation was not even raised until 6 years after the filing of the application and the corrective amendment submitted thereafter. And in *Fair Oaks*, notwithstanding a firm FCC rule requiring the filing of financial commitment letters with the application, the Commission held that the applicant was entitled under PRA to “prove its financial qualifications in any reasonable manner, including by reliance on the Motorola letter . . .” that had been submitted several months after the filing of the application. 10 FCC Rcd. at 9982.

More specifically, it would be legally wrong for the Commission to measure compliance by reference to the specific period allowed after the close of the window for the Block 6 filing in a prior year such as year 3. The specific period set (12 days) set for the receipt of Block 6 in 2003 was not the standard in effect for year 4. It has no factual or legal significance to the evaluation under PRA standards of the reasonableness of North Dakota’s Block 6 submission.<sup>16</sup> Moreover, in the absence of the unapproved “NEW and FIRM” filing requirement, the Form 471 filing instructions (FCC Form 471 Instructions – September 1999 and 2000, p. 5) only required that the Block 6 Certification be completed and mailed to SLD, with no specified deadline for the

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<sup>16</sup> If compliance measured by a prior filing period were the proper standard, one could just as easily select year 2 where a 112 day filing period was allowed.



completion of this act. By any objective standard, North Dakota's Block 6 filing for year 4 satisfied this requirement in a reasonable manner.

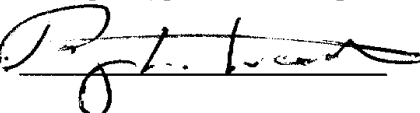
### **CONCLUSION**

The Court of Appeals in *Salzer* and other cases has condemned letter-perfect filing requirements that are incomplete, ambiguous or improperly promulgated. The "NEW and FIRM" requirement fails on all counts. It was unlawfully promulgated under the PRA. And for this reason, the FCC provided applicants with incomplete, ambiguous, confusing and, indeed, conflicting compliance instructions. Applicants reading one document on the website might know of the substantial new requirement, whereas the official Instructions that are part of the Form 470 (the document that applicants could reasonably expect to be the primary source of guidance) conveyed different and inconsistent instructions. This confusing situation, which disadvantaged numerous applicants, is just what the PRA was intended to prevent.

Accordingly, the rejection of North Dakota's application is unlawful under the Paperwork Reduction Act and must be rescinded. The pending petition for reconsideration should be promptly granted, its application reinstated and remanded to the SLD for processing.

Respectfully submitted,

**INFORMATION TECHNOLOGY DEPARTMENT  
STATE OF NORTH DAKOTA**

By: 

Ramsey L. Woodworth  
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Tel: 202-772-0013  
It's Attorney

August 25, 2004

**ATTACHMENT A**

**PAPERWORK REDUCTION ACT SUBMISSION, DATED OCTOBER 19, 2000  
(NOT INCLUDING FCC FORM 471 AND INSTRUCTIONS  
APPENDED TO APPLICATION)**

**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

**OCT 19 2000**

Mr. Donald Arbuckle  
Acting Administrator and Deputy Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget  
Washington, D.C. 20503

Dear Mr. Arbuckle:

Enclosed please find a request for emergency review under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3507(g). We are seeking approval of the enclosed information collection requirement for section 254 of the Telecommunications Act of 1996. Due to the short turnaround time, we request a waiver of the notice requirements of 5 C.F.R. § 1320.8(d) and 1320.5(a)(1)(iv).

On November 8, 1996, the Federal-State Joint Board on Universal Service released a Recommended Decision in which it made recommendations to assist and counsel the Commission in the creation of an effective universal service support mechanism that would ensure that the goals of affordable, quality service and access to advanced services are met by means that enhance competition. On November 18, 1996, the Commission released a Public Notice (DA 96-1891) seeking public comment on the issues addressed and recommendations made by the Joint Board in the Recommended Decision. On May 8, 1997, the Commission adopted rules providing, among other things, discounts on all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. Schools and libraries that have ordered telecommunications services, Internet access, and internal connections under the universal service discount program must file FCC Form 471, "Services Ordered and Certification," with the Administrator. Form 471 requires schools and libraries to list all services that have been ordered and the corresponding discount for which they qualify.

OMB recently approved the FCC Form 471 for a three year period. However, after further review and consultation with applicants, we discovered that additional refinements were needed to enhance clarity and to reduce processing costs. See the attached matrix for a listing of all the changes made to the form along with the corresponding rationale. We believe that the revisions made to the FCC Form 471 are nonsubstantive. However, out of an abundance of caution, we resubmit FCC Form 471 to OMB for review and approval. We do not believe that the revisions will have a significant impact on our current burden estimate.

The Administrator will use the form for Program Year 4 and subsequent years. Since the Administrator intends to open the filing window for Year 4 in late October or early November, 2000, and the forms must be available prior to that time so that necessary

system development can occur in order for the Administrator to be able to process the forms, we respectfully request OMB approval by October 25, 2000.

The collection of this information is essential to the mission of the agency to ensure that only eligible entities receive universal service support. If OMB follows the normal clearance process for information collections, it would effectively impede the Commission's ability to carry out its regulatory responsibilities under the Telecommunications Act of 1996. Delaying the effective date of these information collection requirements would defeat the Commission's goal of creating a stable and predictable program. Furthermore, the information collection requirements have been carefully designed to collect only the data needed for processing the application.

Please notify me by telephone of your action as soon as possible at (202) 418-0214. Thank you for your prompt attention to this matter.

Sincerely,

*Judy E. Boley*  
Judy E. Boley  
Performance Evaluation  
and Records Management  
*by Lashae F. Smith*

Enclosure

### **Justification for Emergency Clearance**

On November 8, 1996, the Federal-State Joint Board on Universal Service released a Recommended Decision in which it made recommendations to assist and counsel the Commission in the creation of an effective universal service support mechanism that would ensure that the goals of affordable, quality service and access to advanced services are met by means that enhance competition. On November 18, 1996, the Commission released a Public Notice (DA 96-1891) seeking public comment on the issues addressed and recommendations made by the Joint Board in the Recommended Decision. On May 8, 1997, the Commission adopted rules providing, among other things, discounts on all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. Schools and libraries that have ordered telecommunications services, Internet access, and internal connections under the universal service discount program must file FCC Form 471, "Services Ordered and Certification," with the Administrator. Form 471 requires schools and libraries to list all services that have been ordered and the corresponding discount for which they qualify.

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The Administrator will use the form for Program Year 4 and subsequent years. Since the Administrator intends to open the filing window for Year 4 in late October or early November, 2000, and the forms must be available prior to that time so that necessary system development can occur in order for the Administrator to be able to process the forms, we respectfully request OMB approval by October 25, 2000.

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## PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two (2) copies of this form, the collection instrument to be reviewed, the Supporting Statement, and any additional documentation to Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17<sup>th</sup> Street, NW Washington, DC

1. Agency/Subagency originating request <b>Federal Communications Commission Common Carrier Bureau</b>		2. OMB control number a. 3060 - 0806      b. <input type="checkbox"/> None	
3. Type of information collection (check one) a. <input type="checkbox"/> New Collection b. <input checked="" type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of currently approved collection d. <input type="checkbox"/> Reinstatement without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without OMB control number <b>For b-f, note Item A2 of Supporting Statement Instructions</b>		4. Type of review requested (check one) a. <input type="checkbox"/> Regular Submission b. <input checked="" type="checkbox"/> Emergency - Approval requested by: <u>Oct. 25, 200</u> c. <input type="checkbox"/> Delegated	
		5. Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input checked="" type="checkbox"/> Other: <u>4/30/2001</u>	
7. Title <b>Universal Service - Schools and Libraries Universal Service Program</b>			
8. Agency form number(s) (if applicable) <b>FCC Forms 470 and 471</b>			
8. Keywords <b>'reporting requirements, universal service, support, schools, libraries, telecommunications carriers, Telecommunications Act of 1996'</b>			
10. Abstract <b>The Commission adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. To participate in the program, schools and libraries must submit a description of the services desired to the Administrator via FCC Form 470. FCC Form 471 is submitted by schools and libraries that have ordered telecommunications services, internet access, and internal connections. The information is used to determine eligibility. FCC Form 471 has been revised.</b>			
11. Affected public (Mark primary with "P" and all others that apply with "X")		12. Obligation to respond (check one)	
a. <input type="checkbox"/> Individuals or household b. <input checked="" type="checkbox"/> Business or other for-profit c. <input checked="" type="checkbox"/> Not-for-profit institutions d. <input type="checkbox"/> Farms e. <input type="checkbox"/> Federal Government f. <input checked="" type="checkbox"/> State, Local or Tribal Government		a. <input type="checkbox"/> Voluntary b. <input checked="" type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory	
13. Annual recordkeeping and reporting hour burden a. Number of respondents <u>60,000</u> b. Total annual responses <u>60,000</u> 1. Percentage of those responses Collected electronically <u>90</u> % c. Total annual hours requested <u>440,000</u> d. Current OMB Inventory <u>440,000</u> e. Difference (+, -) <u>0</u> f. Explanation of difference 1. Program change (+, -) <u>0</u> 2. Adjustment (+, -) <u>0</u>		14. Annual reporting and recordkeeping cost burden (in thousands of dollars) a. Total annualized capital/startup costs <u>0</u> b. Total annual costs (O&M) <u>0</u> c. Total annualized cost requested <u>0</u> d. Current OMB Inventory <u>0</u> e. Difference (+, -) <u>0</u> g. Explanation of difference 1. Program change (+, -) <u>0</u> 2. Adjustment (+, -) <u>0</u>	
15. Purpose of information collection (Mark primary with "P" and all others that apply with "X") a. <input checked="" type="checkbox"/> Application for benefits b. <input type="checkbox"/> Program evaluation c. <input type="checkbox"/> General purpose statistics d. <input type="checkbox"/> Audit e. <input type="checkbox"/> Program planning or management f. <input type="checkbox"/> Research g. <input checked="" type="checkbox"/> Regulatory or compliance		16. Frequency of recordkeeping or reporting (check all that apply) a. <input checked="" type="checkbox"/> Recordkeeping      b. <input checked="" type="checkbox"/> Third Party Disclosure c. <input checked="" type="checkbox"/> Reporting: 1. <input checked="" type="checkbox"/> On occasion      2. <input type="checkbox"/> Weekly      3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly      5. <input type="checkbox"/> Semi-annually      6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially      8. <input type="checkbox"/> Other	
17. Statistical methods: Does this information collection employ statistical methods?  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		18. Agency contact (person who can best answer questions regarding the content of this submission).  Name: <b>Adrian Wright</b>  Phone: <b>202-418-0854</b>	

OMB CONTROL NUMBER:

3060- 0806

TITLE

Universal Service - Schools and Libraries Universal Service Program

**19. Certification for Paperwork Reduction Act Submission****A. PROGRAM OFFICIAL CERTIFICATION (Internal FCC Use Only)**

(1) Signature (FCC B/O Official)

*Sharon Webber*

(2) Date

*October 19, 2000*

On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9.

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8 (b)(3), appear at the end of the instructions. The certification is to be made with reference to those regulatory provisions as set forth in the instructions.

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It uses plain, coherent, and unambiguous language that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention periods for recordkeeping requirements;
- (g) It informs respondents of the information called for under section 5 CFR 1320.8(b)(3) about:
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate
  - (iv) Nature of response (voluntary, required for a benefit, or mandatory)
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number.
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in item 19 of the instructions);
- (i) It uses effective and efficient statistical survey methodology (if applicable); and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of these provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

**B. SENIOR OFFICIAL OR DESIGNEE CERTIFICATION**

(1) Signature (FCC OMD)

*Leslie J. Smith*

(2) Date

**OCT 19 2000**

3060-0806  
October 2000**SUPPORTING STATEMENT**

FCC Universal Service Forms: FCC Form 470 and Form 471.

Note: This submission is being made pursuant to 44 U.S.C. Section 3507 of the paperwork Reduction Act of 1995. The Commission is requesting emergency review and approval of the attached FCC Form 471 to assist the Universal Service Administrator in administering the universal service support mechanisms. FCC Form 470 will remain in effect as currently approved by OMB. The Commission requests that OMB approve the attached form by October 25, 2000. Due to the short turnaround time, we request a waiver of the notice requirements of 5 CFR Sections 1320.8 and 1320.5.

**A. Justification**

1. On November, 8, 1996, the Joint Board released a recommended Decision in which it made recommendations to assist and counsel the Commission in the creation of an effective universal support mechanism that would ensure that the goals of affordable, quality service and access to advanced services are met by means that enhance competition. On May 8, 1997, the Commission adopted rules providing discounts on all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. To participate in the program, schools and libraries must submit FCC Forms 470 and 471.

- a. **Submission of FCC Form 470 "Description of Service Requested and Certification."**

Schools and libraries ordering telecommunications services, Internet access, and internal connections under the universal service discount program must submit a description of the services desired to the Administrator. Schools and libraries may use the same description they use to meet the requirement that they generally face to solicit competitive bids. The Administrator will post those Form 470 forms that request new services on a website for all potential competing service providers to see and respond to as if they were requests for proposals (RFPs). 47 C.F.R. § 54.505(b)(2), 47 C.F.R. § 54.504 (b)(3). Pursuant to section 254(h) of the Telecommunications Act of 1996, 47 U.S.C. § 254 (h), schools and libraries must certify under oath that: (1) the school or library is an eligible entity under section 254(h)(4); (2) the services requested will be used solely for education purposes; (3) the services will not be sold, resold, or transferred in consideration for money or any other thing of value; and (4) if the services are being purchased as part of an aggregated purchase with other entities, the identities of all co-purchasers and the portion of the services being purchased by the school or library. 47 C.F.R. § 54.504(b)(2). For schools ordering telecommunications services at the individual school level (i.e., primarily non-public schools), the person ordering such services should certify to the Administrator the percentage of students eligible in that school



for the national school lunch program (or the other acceptable indicators of economic disadvantage determined by the Commission). This requirement arises in the context of determining which schools are eligible for greater discounts being offered to economically disadvantaged schools. For schools ordering telecommunications services at the school district level, the person ordering such services for the school district should certify to the Administrator the number of students in each of its schools eligible for the national school lunch program (or the other acceptable indicators of economic disadvantages). This requirement also arises in the context of determining which schools are eligible for greater discounts being offered to economically disadvantaged schools. 47 C.F.R. § 54.505(b)(1). Schools and libraries must also certify that they have developed a technology plan that has been approved by an authorized entity. The technology plan should demonstrate that the applicant will be able to deploy any necessary hardware, software, and wiring, and to undertake any necessary teacher training required to use effectively the services ordered pursuant to the section 254(h) discount. 47 C.F.R. § 54.504(b)(2). (No change requested. FCC Form 470 will remain in effect as currently approved by OMB).

b. Submission of FCC Form 471 "Services Ordered and Certification."

Schools and libraries that have ordered telecommunication services, Internet access, and internal connections under the Universal Service Mechanism for Schools and Libraries must file FCC Form 471 with the Administrator. Form 471 requires schools and libraries to list all services that have been ordered and the funding needs for the current funding year. 47 C.F.R. § 54.504(b)(2). This form also gathers information from schools and libraries about the technology currently available to the entity and what is made possible by their application for universal service fund discounts. (See attached memo and matrix which details all changes made to the FCC Form 471. Most of the changes made are for clarification purposes. We anticipate no change in burden).

2. All schools and libraries planning to order services eligible for universal service discounts must file FCC Forms 470 and 471. The purpose of this information is to help determine which schools and libraries are eligible for the greater discounts. Schools and libraries must certify to the Administrator that they have developed an approved technology plan via Form 471. This requirement is designed to help schools and libraries avoid the waste that might arise from requests for services that the schools and libraries would be unable to use for the educational purposes intended.
3. Applicants will be able to electronically file or mail their submissions. Copies of the forms will be available via the Administrator's website.
4. There will be no duplication of information. The information sought is unique to each respondent and similar information is not already available.
5. Entities directly subject to the requirements in the forms are primarily schools and libraries. The forms have been designed to impose the least possible burden on the respondents.

6. Failing to collect the information, or collecting it less frequently, would prevent the Commission from implementing section 254 of the 1996 Act and ensuring that the goals of affordable service and access to advanced services are met by means that enhance, rather than distort, competition.
7. Applicants are required to retain certain filings for five years. The records are needed in case the applicant is audited. If an applicant is audited, it should be able to demonstrate to the auditor how the entries in its application were provided.
8. This is an emergency request. We ask OMB to waive the notice requirements of 5 CFR 1320. The public will be given an opportunity to comment on the collection prior to our resubmission under regular procedures.
9. There will be no payments or gift to respondents.
10. The Commission is not requesting that the respondents submit confidential information to the Commission. If the Commission requests applicants to submit information that the respondents believe is confidential, respondents may request confidential treatment of such information under section 0.459 of the Commission's rules.
11. There are no questions of a sensitive nature with respect to the information collected.
12. The following represents the hour burden on the collections of information:
  - a. Submission of FCC Form 470 "Description of Service Requested and Certification."
    - (1) Number of respondents: Approximately 50,000 public school districts, private schools and public library systems.
    - (2) Frequency of response: On occasion. Each school and library must submit FCC Form 470, describing the services desired, to the Administrator.
    - (3) Annual burden per response: 4 hours. The total annual hour burden is 200,000 hours. This estimate includes the time needed for complying with the record retention requirement.
    - (4) Total estimate of the annualized cost to respondents for the hour burdens for collection of information: \$8,000,000.
    - (5) Explanation of calculation: We estimate that this obligation will take approximately 4 hours and will occur once a year for 50,000 schools and libraries.  $50,000$  (number of respondents)  $\times$   $1$  (number of submissions required)  $\times$   $4$  (hours to prepare form, including time for reading instructions)  $\times$  \$40 per hour (including administrative staff time and overhead) = \$8,000,000.
  - b. Submission of FCC Form 471 "Services Ordered, Certification, and Termination."
    - (1) Number of respondents: Approximately 60,000 public school districts, private schools and public library systems.

- (2) Frequency of response: On occasion. Each school and library must submit FCC Form 471, describing the services desired, to the Administrator.
- (3) Annual burden per response: 4 hours. The total annual hour burden is 240,000 hours. This estimate includes the time need for complying with the record retention requirement.
- (4) Total estimate of the annualized cost to respondents for the hour burdens for collection of information: \$9,600,000.
- (5) Explanation of calculation: We estimate that this obligation will take approximately 4 hours and will occur once a year for 60,000 schools and libraries. 60,000 (number of respondents) x 1 (number of submissions required) x 4 (hours to prepare form, including time for reading instructions) x \$40 per hour (including administrative staff time and overhead) = \$9,600,000.

Total Annual Burden = 200,000 + 240,000 = 440,000 burden hours.

- 13. (1) Total capital start-up costs component annualized over its expected useful life: \$0. The collections will not require the purchase of additional equipment.  
(2) Total operation and maintenance and purchase of service component: \$0. The collections will not result in additional operation or maintenance expenses.
  - 14. There will be few, if any costs to the Commission because notice and enforcement requirements are already part of Commission duties. Moreover, there will be minimal cost to the Federal government since an outside party will administer this program.
  - 15. The public burden for the collections contained herein continues to be 440,000 burden hours. Even though the FCC form 471 has been revised, we do not anticipate any significant change in burden. The collections are necessary to implement the universal service discount program for schools and libraries.
  - 16. The Commission will make the information required by 47 C.F.R. § 54.504 publicly available on the Internet. Other non-proprietary information will likely be made publicly available although the Commission does not have specific plans for doing so at this time.
  - 17. The Commission seeks continued approval to not display the expiration date for OMB approval of the information collections. Display of the expiration date on the forms and instructions would not be in the public interest because, after the approval period, we would have to destroy all of the unused forms bearing the expiration date. This would constitute waste and would not be cost effective.
  - 18. Applicants are required to retain certain records longer than three years. Applicants must retain records to be able to demonstrate to the auditor how the entries in their application were provided. This is an emergency request. We ask OMB to waive the notice requirements of 5 CFR 1320.
- B. Collections of Information Employing Statistical Methods.

The Commission does not anticipate that the collection of information will employ statistical methods.

DETAIL OF CHANGES OF YEAR 4 FORM 471 SUBMITTED TO THE FCC 10/16/00

Change No.	Block/Item	(H)	(M)	(N)
1	Block 1 (Item 5)	(Individual School)	Type of Application	More accurate. Also, facilitates automatic movement to relevant Worksheet for online filing.
2	Block 1 (Item 6)	(Including library systems, library branch, or library consortium applying as a library)	School (Library (i.e. outlier/branch, system))	Library consortiums now captured as "Consortium" to facilitate automatic movement to relevant Worksheet for online filing.
3	Block 2 Item 7 (Item 6)	Check ONLY if this Form 471 represents a minor modification, to a consortium, included in a Form 471 for which you already have a Receipt)	Holiday/vacation/summer contact information:	Addition of "Summer" will enhance school contacts.
4	Block 4 (Item 4)	The following 3 pages (3a, 3b and 3c) are Block 4 worksheets for use in calculating your discount for services. You will complete one or more depending on the type of application you are filing. sales you represent, and how services will be provided to those sites. If you are an individual school or a school district, use Worksheet A (page 3a). If you are a library (system and/or outlier), use Worksheet B (page 3b). If you are a consortium, use Worksheet C (page 3c), and include as many Worksheets A and B for back-up and documentation.	Discount Calculation Worksheet A for Schools/School Districts Discount Calculation Worksheet B for Libraries/School Districts	Conforming adjustment to align with change n° 1 above.
5	Block 4 (Item 5)	Block 4 (Item 5)	Block 4 (Item 5)	Conforming adjustment to align with change n° 1 above.
6	Block 4 (Item 6)	Block 4 (Item 6)	Block 4 (Item 6)	Conforming adjustment to align with change n° 1 above.
7	Block 4 (Item 7)	Block 4 (Item 7)	Block 4 (Item 7)	Conforming adjustment to align with change n° 1 above.

**DETAIL OF CHANGES OF YEAR 4 FORM 471 SUBMITTED TO THE FCC 10/16/00**

Change N°	Block/Item	Old	New	Rationale
		Applying for discounts on different shared services shared by different groups of schools (with or without site-specific services as well):	(Check box became Bullet) Applying for discounts on different shared services shared by different groups of schools (with or without site-specific services as well):	Clarity and less burden.
8	Item 10b	List entities and calculate discount(s).	List entities and calculate discount(s). School District Name: _____ School District Entity Number: _____	Provides for clarity of data; avoids misidentification during processing.
	Column 1	Name of School	Name of Eligible School	Clarity
		District Totals for calculating Weighted Average Discount	Totals for calculating Weighted Average Discount	Clarity
	Column 8	Blank	(round to 2 decimal places)	Clarity
9	Upper right corner of page	Blank	(For Administrator's Use)	Facilitates USAC processing.
10	Block 4 Worksheet B Title	Discount Calculation Worksheet B For Libraries (Outlets and Systems)	Discount Calculation Worksheet B For Libraries	Conforming adjustment to align with change n° 1 above.
		Instructions: Libraries use this Worksheet to calculate the discount rate(s) for their system and outlets based on school district(s) in which they are located.	If you are filing a library application, use this worksheet to calculate the discount rate(s) for outlets/branches and systems.	Clarity
11	10a	Check only one: Applying for discounts ONLY for one site (such as a library system that is all on one site) or ONLY for site-specific services: Complete columns 1-5 only for each site. Attach and number additional pages as needed.	If you are: Applying for discount ONLY for one outlet/branch or ONLY for site-specific services: Complete columns 1-5 only for each outlet/branch. Add and number pages as needed.	Clarity Clarity
		Applying for discounts on services shared by ALL sites in library system (with or without site specific services as well):	Applying for discounts on services shared by ALL outlets/branches in the library system (with or without site-specific services as well):	Clarity
		Applying for discounts on different shared services that are shared by different groups of sites/outlets: Please complete one worksheet, columns 1-5 PLUS 10c, for EACH group of sharing entities.	Applying for discounts on different shared services that are shared by different groups of outlets/branches: Complete one worksheet, columns 1-5 PLUS 10c, for EACH different group of outlets/branches sharing a service.	Clarity
12	10b	List entities and calculate discount(s).	List entities and calculate discount(s). Library System Name: _____ Library System Entity Number: _____	Provides for clarity of data; avoids misidentification during processing.
	Column 1	Name of Library System (if all on one site) or Individual Library Outlets (if multiple sites)	Name of Eligible Library (outlet/branch)	Clarity
	Column 2	Entity for each site listed in Column 1 (1-10 digits)	Entity Number (1-10 digits)	Clarity
	Column 3	Urban or Rural O or R	Blank	Data collected elsewhere on form; not needed here.

**DETAIL OF CHANGES OF YEAR 4 FORM 471 SUBMITTED TO THE FCC 10/16/00**

Change N°	Block/Item	Old	New	Rationale
	Column 4	Name of School District in which site in Column 1 is located	Name of School District in which outlet/branch in Column 1 is located	Clarify where relevant
13	10c	Shared Discount % (Col. 5 total divided by # of sites in Col. 1. Round to nearest %)	Shared Discount % (Col. 5 total divided by # of outlets/branches in Col. 1. Round to nearest %)	Clarify
	Upper right corner of page	Blank	(For Administrator's Use)	Facilitates USAC processing.
14	Block 4 Worksheet C	Instructions: Consortium applicants use this worksheet to calculate their discounts based on their eligible members' discounts. Please provide worksheets A and/or B for back-up documentation.	If you are filing a Consortium application, use this worksheet to calculate the consortium discount rate based on eligible members' discounts. Provide worksheets A and/or B for back-up documentation.	Clarify
15	10a	Check only one:	If you are:	Clarify
		Applying for discounts ONLY on site-specific services: Complete columns 1-4 only.	(Check square became a Bullet) Applying for discounts ONLY on site-specific services: Complete columns 1-4 only.	Clarify. One less item to fill in.
		Applying for discounts on services shared by ALL members (with or without site-specific services as well):	(Check box became a Bullet) Applying for discounts on services shared by ALL members (with or without site-specific services as well):	Clarify. One less item to fill in.
		Applying for discounts on different shared services shared by different groups of consortium members: Please complete one worksheet, columns 1-4 PLUS 10c, for each group of sharing entities.	(Check box became a Bullet) Applying for discounts on different shared services shared by different groups of consortium members: Complete one worksheet, columns 1-4 PLUS 10c, for EACH different group of entities sharing a service.	Clarify. One less item to fill in.
16	10b Column 1	ELIGIBLE MEMBER ENTITIES Name of each individual school, school district and/or library/library system in consortium	ELIGIBLE MEMBER ENTITIES Name of each school, school district and/or library (i.e. outlet/branch, system) in consortium	Conforming adjustment to align with change n° 1 above.
	Column 3	Urban or Rural O or R	Blank	Provides for clarity of data; avoids misidentification during processing.
	Column 4	ENTITY DISCOUNT Individual school: Discount from Worksheet A. School District: Weighted average Discount calculated in worksheet A.	ENTITY DISCOUNT School: Discount from Worksheet A, Column 7. School District: Weighted Average Discount from Worksheet A, Item 10c. Library System: Discount from Worksheet B, Item 10c	Conforming adjustment to align with change n° 1 above.
	10c	Shared Discount % (Col. 4 total divided by # of sites in Col. 1. Round to nearest %)	Shared Discount % (Col. 4 total divided by # of entities in Col. 1. Round to nearest %)	Clarify.
17	Block 5 Item 17	Allowable Contract Date (mm/dd/yyyy, based on Form 470 filing)	Allowable Vendor Selection/Contract Date (mm/dd/yyyy) (based on Form 470 filing)	Clarify. Recognizes tariff/MTM vendors.
18	Item 19	Service Start Date (mm/dd/yyyy)	Item 19a Service Start Date (mm/dd/yyyy)	Clarify and data verification.
	Item 19b	Blank (none)	Service End Date (mm/dd/yyyy) (use only for "T" or "MTM" services)	
19	Item 23 Column E	(DwC)	(CxD)	Logical sequence.

# DETAIL OF CHANGES OF YEAR 4 FORM 471 SUBMITTED TO THE FCC 10/16/00

Change #	Block/Item	Old	New	Rationale
	Title of Columns F-H	One-Time Charges	Non-Recurring Charges	Clarity and consistency in terminology.
	Column K	(ix)	(ix)	Logical sequence.
20	Block 6 Item 24	The applicant is eligible for support because it includes. (Check one or both.)	The entities listed in Block 4 of this application are eligible for support because they are: (Check one or both.)	Clarity.
21	Item 25	The schools and libraries I represent, have secured access to all of the resources, including computers.....	The eligible schools and libraries listed in block 4 of this application have secured access to all of the resources, including computers.....	Clarity
22	Item 26	All of the individual schools, libraries and library consortia listed in Block 4 are covered by:	All of the schools and libraries or libraries consortia listed in Block 4 of this application are covered by:	Clarity
23	Item 27a	technology plan(s) has/have been approved	technology plan(s) has/have been approved; and/or	Clarity
	Item 27b	technology plan(s) will be approved by a state or other authorized body	technology plan(s) will be approved by a state or other authorized body; or	Clarity
24	Item 32	I recognize that I may be audited pursuant to this application and will retain for five years any and all worksheets and other records that I rely upon to fill out this application.	I recognize that I may be audited pursuant to this application. I will retain for five years any and all worksheets and other records that I rely upon to fill out this application, and, if audited, will make available to the Administrator such records.	Clarity.
25	Item 34	Signature	Signature of authorized person	Clarity.
26	Footer on all pages	FCC Form 471 - September 1999	FCC Form 471 - October 2000	New date.



## CERTIFICATE OF SERVICE

I, Donna L. Brown, hereby certify that on August 25, 2004, caused copies of the foregoing "**Supplement**" to be hand delivered to the following:

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\*Via U.S. Mail